

RESIDENTIAL TENANCIES ACT 1987 No. 26

NEW SOUTH WALES



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RESIDENTIAL TENANCIES ACT 1987 No. 26

NEW SOUTH WALES



Act No. 26, 1987

An Act relating to the rights and obligations of landlords and tenants under residential tenancy agreements; to make provision with respect to excessive rent increases and rents; to confer functions on the Residential Tenancies Tribunal of New South Wales with respect to landlords and tenants; to repeal the Residential Tenancies Tribunal Act 1986 and to re-enact the provisions of that Act; to amend the Justices Act 1902 in relation to certain penalty notices; to amend the Consumer Claims Tribunals Act 1974 in relation to rental bonds claims; and for other purposes. [Assented to 12 May 1987]

See also Landlord and Tenant (Amendment) Act 1987.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the "Residential Tenancies Act 1987".

Commencement

2. (1) Sections 1, 2, 3 and 137 and Schedule 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Chairperson" means the Chairperson of the Tribunal;

"Commissioner for Consumer Affairs" includes any person appointed under the Consumer Protection Act 1969 to act as Commissioner;

"Deputy Registrar" means a Deputy Registrar of the Tribunal;

"landlord" means the person who grants the right to occupy residential premises under a residential tenancy agreement, and includes the person's heirs, executors, administrators and assigns;

"landlord's agent" means a person who acts as the agent of a landlord and who (whether or not the person carries on any other business) carries on business as an agent for—

(a) the letting of residential premises; or

(b) the collection of rents payable for any tenancy of residential premises;

"member" means the Chairperson or any other full-time member or part-time member of the Tribunal;

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“movable dwelling” has the same meaning as it has in Division 5B of Part X of the Local Government Act 1919;

“record” includes any book, account, document, paper and other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;

“Registrar” means the Registrar of the Tribunal;

“regulations” means regulations made under this Act;

“rent” means an amount payable by a tenant under a residential tenancy agreement in respect of a period of the tenancy;

“rental bond”, in relation to a residential tenancy agreement or proposed residential tenancy agreement, has the same meaning as it has in the Landlord and Tenant (Rental Bonds) Act 1977 in relation to a lease or proposed lease;

“residential premises”—

- (a) means any premises or part of premises (including any land occupied with the premises) used or intended to be used as a place of residence; and
- (b) includes a movable dwelling or the site on which a movable dwelling is situated or intended to be situated (or both the movable dwelling and the site), if the movable dwelling is used or intended to be used as a place of residence;

“Residential Tenancies Program Account” means the account of that name established in the Special Deposits Account in the Treasury containing contributions from—

- (a) the Auctioneers and Agents Statutory Interest Account established under section 63B of the Auctioneers and Agents Act 1941; and
- (b) the Rental Bond Interest Account established under section 18 of the Landlord and Tenant (Rental Bonds) Act 1977;

“residential tenancy agreement” means any agreement under which a person grants to another person for value a right of occupation of residential premises for the purpose of use as a residence—

- (a) whether or not the right is a right of exclusive occupation;
- (b) whether the agreement is express or implied; and

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(c) whether the agreement is oral or in writing, or partly oral and partly in writing,

and includes such an agreement granting the right to occupy residential premises together with the letting of goods;

“tenancy” means the right to occupy residential premises under a residential tenancy agreement;

“tenant” means the person who has the right to occupy residential premises under a residential tenancy agreement, and includes the person’s heirs, executors, administrators and assigns;

“this Act” includes the regulations;

“Tribunal” means the Residential Tenancies Tribunal of New South Wales constituted by this Act.

(2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) In this Act—

(a) a reference to a landlord includes a reference to a tenant who has granted the right to occupy residential premises to a sub-tenant; and

(b) a reference to a tenant includes a reference to the sub-tenant of a tenant.

(4) In the definition of “tenant” in subsection (1), a reference to a person extends to a corporation if at least one employee or director of the corporation or other person associated (as provided by the regulations) with the corporation occupies the residential premises concerned.

(5) In this Act, a reference to the giving of something by a person includes a reference to the causing of that thing to be given by the person.

(6) The Chairperson may be referred to as the Chairman or Chairwoman.

Crown bound

4. Except as provided by section 132 (which exempts the New South Wales Land and Housing Corporation from certain provisions of this Act), this Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Application of Act

5. (1) This Act applies to residential tenancy agreements made after the commencement of this section.

(2) This Act (except as provided by Part 1 of Schedule 2) applies to oral residential tenancy agreements made before the commencement of this section.

(3) This Act (except as provided by clause 9 of Schedule 2 and subsection (4)) applies to—

- (a) written residential tenancy agreements; and
- (b) partly written and partly oral residential tenancy agreements, made before the commencement of this section.

(4) Until such time as the regulations provide—

- (a) sections 64 and 65 do not apply to—
 - (i) written residential tenancy agreements; and
 - (ii) partly written and partly oral residential tenancy agreements, made before the commencement of this section; and
- (b) clauses 10 and 11 of Schedule 2 apply to such agreements.

(5) Where this Act applies to a residential tenancy agreement, it so applies notwithstanding the terms of any such residential tenancy agreement or any other contract, agreement or arrangement, whether made before or after the commencement of this section.

Agreements and premises to which Act does not apply

6. (1) This Act does not apply to a residential tenancy agreement—

- (a) if the tenant is a party to an agreement made in good faith for the sale or purchase of the residential premises;
- (b) if the agreement arises under a mortgage made in good faith in respect of the residential premises;
- (c) if the agreement arises under a company title scheme under which—
 - (i) a group of adjoining or adjacent premises is owned by a corporation; and
 - (ii) the premises are let by the corporation to persons who jointly have a controlling interest in the corporation;

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- (d) if the tenant is a boarder or a lodger; or
- (e) if the agreement is made in good faith for the purpose of giving a person a right to occupy residential premises (not being premises ordinarily used for holiday purposes) for a period of not more than 2 months for the purpose of a holiday.

(2) This Act does not apply to—

- (a) premises to which Parts II, III, IV and V of the Landlord and Tenant (Amendment) Act 1948 apply;
- (b) any part of a hotel or motel;
- (c) any premises ordinarily used for holiday purposes;
- (d) any part of an educational institution, hospital or nursing home;
- (e) any part of a club;
- (f) any premises used as an approved home within the meaning of the Aged or Disabled Persons Homes Act 1954 of the Commonwealth; or
- (g) any premises used as an approved hostel within the meaning of the Aged or Disabled Persons Hostels Act 1972 of the Commonwealth.

(3) Nothing in subsection (2) applies to any part of premises referred to in paragraph (b), (c), (d), (e), (f) or (g) of that subsection if the part is used solely as a place of residence by a person employed as a caretaker for the premises or in any similar capacity.

Application of Act to movable dwellings

7. (1) This Act applies to residential tenancy agreements under which the residential premises consist of—

- (a) a movable dwelling; or
- (b) a site on which a movable dwelling is situated or intended to be situated,

or both, but only in the manner and to the extent specified by the regulations.

(2) For the purposes of subsection (1), a person—

- (a) who is granted the right to occupy a site on which a movable dwelling is proposed to be situated but does not personally use or intend it to be personally used as a residence; and

- (b) who assigns the right to occupy the site or sub-lets the site to another person for the purpose of use by the other person as a residence,

shall be deemed to be a tenant under a residential tenancy agreement of the person who granted the right to occupy the site and, if the right is assigned, to have assigned all the rights of such a tenant under this Act as applied by subsection (1).

- (3) Nothing in this section limits the operation of section 133 (3) (which enables exemptions from the operation of this Act).
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PART 2

RESIDENTIAL TENANCY AGREEMENTS

Standard form of residential tenancy agreement

8. (1) The regulations may prescribe a standard form of residential tenancy agreement.

- (2) The regulations may provide for—

- (a) more than one standard form of residential tenancy agreement; or
- (b) the addition of clauses to, or the omission or variation of clauses contained in, the standard form or forms,

for use in relation to different classes of residential premises, agreements or parties.

- (3) A prescribed standard form of residential tenancy agreement—

- (a) shall be deemed to contain all terms included in the agreement by Part 3;
- (b) may set out those terms or provisions to the same effect; and
- (c) may contain other terms not inconsistent with this Act.

(4) A prescribed standard form of residential tenancy agreement shall include a condition report relating to the condition of the residential premises, to be completed in accordance with the regulations.

(5) A prescribed standard form of residential tenancy agreement may not exclude the operation or vary the effect of any of the terms referred to in subsection (3) (a).

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Agreements to be in standard form

9. (1) If a standard form of residential tenancy agreement is prescribed, a residential tenancy agreement for which a form is prescribed and which is entered into on or after the day the form is prescribed, or any later day prescribed for the purpose, shall be in or to the effect of the form.

(2) Except as provided by section 10, a residential tenancy agreement for which a standard form is prescribed is void to the extent to which it is not in or to the effect of the form.

(3) Except as provided by this Act, the terms contained in a prescribed standard form of residential tenancy agreement shall not be varied by the parties to a residential tenancy agreement for which the form is prescribed and to the extent that they are so varied shall be deemed not to have been varied.

(4) Nothing in subsection (2) or (3) voids a right to occupy residential premises that is granted by a residential tenancy agreement referred to in those subsections.

Additional terms

10. (1) The parties to a residential tenancy agreement for which a standard form is prescribed may insert additional terms in the standard form, but only if the terms—

- (a) do not contravene this or any other Act; or
- (b) are not inconsistent with the terms prescribed in the standard form.

(2) An additional term is void if the Tribunal so orders, on application by a tenant or a landlord, on being satisfied that the additional term contravenes subsection (1).

Terms in Act to prevail

11. A term of a residential tenancy agreement is void to the extent to which it is inconsistent with any term included in the agreement by Part 3.

Costs of preparation etc. of residential tenancy agreement

12. (1) The costs of preparation of a written residential tenancy agreement by or on behalf of a landlord are payable in equal shares by the landlord and the tenant.

(2) A landlord under a proposed written residential tenancy agreement shall give to the tenant under the proposed agreement, before the tenant enters into the agreement, a written statement of any costs of preparation of the agreement and of any other charges (including any stamp duty) payable by the tenant in respect of the agreement.

(3) The regulations may prescribe a maximum amount payable by a tenant for the costs of preparation of a written residential tenancy agreement and for any other charges (other than stamp duty) payable by a tenant in respect of the agreement.

Certain unexecuted residential tenancy agreements enforceable

13. (1) If a residential tenancy agreement has been signed by a tenant and given to the landlord or a person on the landlord's behalf and has not been signed by the landlord—

- (a) acceptance of rent by or on behalf of the landlord without reservation; or
- (b) any other act of part performance of the agreement by or on behalf of the landlord,

gives to the document the same effect it would have if it had been signed by the landlord on the first day in respect of which rent was accepted or on the day on which such an act was first performed.

(2) This section applies notwithstanding section 54A (which requires contracts for sale etc. of land to be in writing) of the Conveyancing Act 1919.

(3) In this section—

“signed” includes executed by a corporation in any manner permitted by law.

Continuation of fixed term agreements

14. (1) If a residential tenancy agreement (having no provision in its terms for continuation) that creates a tenancy for a fixed term continues after the day on which the term ends and notice of termination has not been given before that day in accordance with this Act, then—

- (a) the residential tenancy agreement shall continue to apply on the same terms (other than any term relating to termination of the agreement) as last applying before that day, and

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- (b) the residential tenancy agreement so continues on the basis that the tenant is holding over under a periodic tenancy.

(2) The Tribunal may, on application by a landlord or a tenant, modify the terms (including terms contained in any standard form but not any terms set out in Part 3) of a residential tenancy agreement included in the agreement by this section as it considers appropriate for the continuation of the agreement.

Parties to minimise loss from breach of residential tenancy agreement

15. (1) The rules of law relating to mitigation of loss or damage on breach of a contract apply to a breach of a residential tenancy agreement.

(2) Nothing in this section affects the operation of section 78 (which also deals with mitigation of loss).

Applications relating to a dispute or breach of residential tenancy agreement

16. (1) If a landlord or a tenant under a residential tenancy agreement claims that—

- (a) a breach of a term of the agreement has occurred; or
- (b) a dispute has arisen under the agreement,

the landlord or the tenant may, not later than 30 days after becoming aware of the breach or dispute, apply to the Tribunal for an order in respect of the breach or dispute.

(2) The Tribunal may, on application by a landlord or a tenant under this section, make one or more of the following orders:

- (a) an order that—
 - (i) restrains any action in breach of the residential tenancy agreement; or
 - (ii) requires an action in performance of the agreement;
- (b) an order for the payment of an amount of money;
- (c) an order that a party to the residential tenancy agreement perform such work or take such other steps as the order specifies to remedy a breach of the agreement;
- (d) an order as to compensation, including (without limiting the Tribunal's power to make such an order)—
 - (i) compensation for loss of rent;

- (ii) compensation where a landlord unreasonably withholds or refuses consent to the removal of a tenant's fixture; and
 - (iii) compensation for any other breach of the residential tenancy agreement;
 - (e) an order that requires payment of part or all of the rent under the residential tenancy agreement into the Tribunal until the whole or part of the agreement has been performed or any application for compensation has been determined;
 - (f) an order that requires payment (out of rent paid into the Tribunal) towards the cost of remedying a breach of the residential tenancy agreement or towards the amount of any compensation.
- (3) An order under subsection (2) (a) may be made even though it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such a remedy would not otherwise be available.
- (4) An application under this section may be made during the currency of or after the termination of a residential tenancy agreement and may be made whether or not notice of termination has been given or an order for termination has been made by the Tribunal.
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PART 3

LANDLORDS AND TENANTS

DIVISION 1—*Rights and obligations***Landlord to give tenant copy of residential tenancy agreement**

17. (1) It is a term of every residential tenancy agreement that the landlord shall give each tenant—

- (a) a copy of the agreement, at or before the time the agreement is signed and given by the tenant to the landlord or a person on the landlord's behalf; and
- (b) a copy of the fully executed agreement, as soon as reasonably practicable.

(2) A landlord under a residential tenancy agreement shall not contravene or fail to comply with subsection (1).

Payment of rent

18. It is a term of every residential tenancy agreement that the tenant shall pay the rent on or before the day set out in the agreement.

Landlord to pay council and water rates, land tax etc.

19. It is a term of every residential tenancy agreement that the landlord shall pay all rates, taxes or charges payable under any Act in connection with the residential premises (other than charges for electricity, gas, excess water and any other prescribed charges).

Legal impediments to occupation as residence

20. It is a term of every residential tenancy agreement on the part of the landlord that there is not any legal impediment (of which the landlord had or ought reasonably to have had knowledge at the time of entering into the agreement) to occupation of the residential premises as a residence for the period of the tenancy.

Vacant possession

21. (1) It is a term of every residential tenancy agreement that the tenant shall have vacant possession of the residential premises on the day on which the tenant is entitled to occupy those premises under the agreement.

(2) This section does not apply to any part of residential premises to which the tenant does not have a right of exclusive occupation.

Tenant's right to quiet enjoyment

22. (1) It is a term of every residential tenancy agreement that—

- (a) the tenant shall have quiet enjoyment of the residential premises without interruption by the landlord or any person claiming by, through or under the landlord or having superior title (for example, a head landlord) to that of the landlord; and
- (b) the landlord or the landlord's agent shall not interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of the tenant in using the residential premises.

(2) A landlord or a landlord's agent under a residential tenancy agreement shall not, during the currency of the agreement, contravene or fail to comply with subsection (1).

Use of premises by tenant

23. It is a term of every residential tenancy agreement that—

- (a) the tenant shall not use the residential premises, or cause or permit the premises to be used, for any illegal purpose;
- (b) the tenant shall not cause or permit a nuisance; and
- (c) the tenant shall not interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of any neighbour of the tenant.

Landlord's access to residential premises

24. (1) It is a term of every residential tenancy agreement that the landlord, the landlord's agent or any person authorised in writing by the landlord, during the currency of the agreement, may enter the residential premises, but only in the following circumstances:

- (a) in an emergency (including entry for the purpose of carrying out urgent repairs);
- (b) to inspect the residential premises, on not more than 4 occasions in any period of 12 months, if the tenant has been given not less than 7 days' written notice on each occasion;
- (c) to carry out necessary repairs (other than urgent repairs) to, or maintenance of, the residential premises, if the tenant has been given not less than 2 days' written notice on each occasion;

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- (d) to show the residential premises to prospective purchasers or mortgagees, on a reasonable number of occasions, if the tenant has been given reasonable notice on each occasion;
 - (e) to show the residential premises to prospective tenants, on a reasonable number of occasions during the period of 14 days preceding the termination of the agreement, if the tenant has been given reasonable notice on each occasion;
 - (f) if the landlord forms a belief on reasonable grounds that the residential premises have been abandoned;
 - (g) at any time with the consent of the tenant;
 - (h) in accordance with an order of the Tribunal.
- (2) It is a term of every residential tenancy agreement that a person shall not enter the residential premises in the circumstances set out in subsection (1) (b), (c), (d) or (e)—
- (a) on a Sunday or a public holiday, unless the tenant otherwise agrees;
 - (b) except between the hours of 8.00 a.m. and 8.00 p.m., unless the tenant otherwise agrees; and
 - (c) in the case of a person other than the landlord or the landlord's agent—except with the prior written consent of the landlord or the landlord's agent.
- (3) It is a term of every residential tenancy agreement that a written consent referred to in subsection (2) (c) must be produced to the tenant.
- (4) The Tribunal may, on application by a landlord under a residential tenancy agreement, make an order authorising the landlord or any other person to enter the residential premises.
- (5) A landlord under a residential tenancy agreement, the landlord's agent or other person referred to in this section shall not, during the currency of the agreement, enter the residential premises except as permitted by this section.

Landlord's responsibility for cleanliness and repairs

25. (1) It is a term of every residential tenancy agreement that—
- (a) the landlord shall provide the residential premises in a reasonable state of cleanliness and fit for habitation by the tenant; and

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- (b) the landlord shall provide and maintain the residential premises in a reasonable state of repair, having regard to the age of, rent payable for and prospective life of the premises.

(2) In this section—

“residential premises” includes everything provided with the premises (whether under the residential tenancy agreement or not) for use by the tenant.

Cleanliness, notification of damage to residential premises etc.

26. (1) It is a term of every residential tenancy agreement that—

- (a) having regard to the condition of the residential premises at the commencement of the tenancy, the tenant shall keep the residential premises in a reasonable state of cleanliness;
- (b) the tenant shall, as soon as practicable, notify the landlord of any damage to the residential premises;
- (c) the tenant shall not intentionally or negligently cause or permit any damage to the residential premises; and
- (d) at the termination of the tenancy, the tenant shall leave the residential premises as nearly as possible in the same condition, fair wear and tear excepted, as set out in any condition report forming part of the residential tenancy agreement.

(2) In this section—

“residential premises” includes everything provided with the premises (whether under the residential tenancy agreement or not) for use by the tenant.

Alterations, additions etc. to residential premises

27. It is a term of every residential tenancy agreement that—

- (a) the tenant shall not, except with the landlord’s written consent or unless the agreement otherwise provides, affix any fixture or make any renovation, alteration or addition to the residential premises;
- (b) the tenant shall not, except with the landlord’s written consent or unless the agreement otherwise provides, remove any fixture that the tenant has affixed to the residential premises;
- (c) the landlord shall not unreasonably withhold or refuse consent to any proposed action by the tenant referred to in paragraph (a) or (b);

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- (d) if the tenant causes any damage to the residential premises by removing any fixture affixed by the tenant, the tenant shall notify the landlord and, at the landlord's request, repair the damage or compensate the landlord for the landlord's reasonable expenses in repairing the damage; and
- (e) if the landlord reasonably withholds or refuses consent to the removal of a fixture affixed by the tenant, the landlord shall without delay compensate the tenant for the value of the fixture.

Urgent repairs

28. (1) It is a term of every residential tenancy agreement that the landlord shall, not later than 14 days after receiving a written notice from the tenant, reimburse the tenant for any reasonable costs (up to but not exceeding, in each case, \$800 or such other amount as may be prescribed) incurred by the tenant in making urgent repairs to the residential premises, where—

- (a) the state of disrepair arose otherwise than as a result of a breach of the agreement by the tenant;
- (b) the tenant has given or has made a reasonable attempt to give the landlord notice of the state of disrepair;
- (c) if notice has been given, the tenant has given the landlord a reasonable opportunity to make the repairs;
- (d) the repairs were carried out, where appropriate, by licensed or otherwise properly qualified persons; and
- (e) the tenant has, as soon as practicable, given or has made a reasonable attempt to give the landlord a written notice specifying details of the repairs and their costs, together with all receipts or copies of receipts for costs paid by the tenant.

(2) In this section—

“residential premises” includes everything provided with the premises (whether under the residential tenancy agreement or not) for use by the tenant;

“urgent repairs” means any work needed to repair any one or more of the following:

- (a) a burst water service;
- (b) a blocked or broken lavatory system;

- (c) a serious roof leak;
- (d) a gas leak;
- (e) a dangerous electrical fault;
- (f) flooding or serious flood damage;
- (g) serious storm or fire damage;
- (h) a failure or breakdown of the gas, electricity or water supply to the residential premises;
- (i) a failure or breakdown of any essential service on the residential premises for hot water, cooking, heating or laundering;
- (j) any fault or damage that causes the residential premises to be unsafe or insecure;
- (k) any other prescribed damage,

but does not include work needed to repair premises not owned by the landlord or a person having superior title (for example, a head landlord) to the landlord.

(3) Nothing in this section prevents a tenant, with the consent of the landlord, from—

- (a) making repairs to the residential premises; and
- (b) being reimbursed for the costs of those repairs.

Locks and other security devices

29. (1) It is a term of every residential tenancy agreement that—

- (a) the landlord shall provide and maintain such locks or other security devices as are necessary to ensure that the residential premises are reasonably secure;
- (b) neither the landlord nor the tenant shall, except with reasonable excuse or the consent of the other party, alter, remove or add or cause or permit the alteration, removal or addition of any lock or other security device; and
- (c) a copy of the key or any other opening device or information required to open a lock or other security device which is altered, removed or added shall be given to the other party, except where the other party consents to not being given a copy or the Tribunal authorises a copy not to be given.

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(2) A landlord or a tenant under a residential tenancy agreement shall not, except with reasonable excuse or the consent of the other party, alter, remove or add or cause or permit the alteration, removal or addition of any lock or other security device of the residential premises.

(3) It is a reasonable excuse that a lock or other security device was altered, removed or added—

- (a) in an emergency; or
- (b) in accordance with an order of the Tribunal,

but this does not limit the meaning of reasonable excuse.

(4) If a lock or other security device is altered, removed or added by the landlord or the tenant without the consent of the other party, it shall be presumed, in the absence of evidence to the contrary, that it was altered, removed or added by the landlord or the tenant without reasonable excuse.

(5) The Tribunal may, on application by a landlord or a tenant under a residential tenancy agreement—

- (a) make an order authorising the landlord or the tenant to alter, remove or add any lock or other security device;
- (b) make an order authorising the landlord or the tenant to refuse to give to the other party a copy of a key or any other opening device or information; or
- (c) make an order requiring a copy of a key or any other opening device or information to be given to the landlord or the tenant,

if it is satisfied that it is reasonable in the circumstances to do so.

Tenant's liability for actions of others

30. It is a term of every residential tenancy agreement that the tenant is vicariously responsible to the landlord for any act or omission by any other person who is lawfully on the residential premises (other than a person who has a right of entry to the premises without the tenant's consent) that would have been a breach of the agreement if it had been an act or omission by the tenant.

Certain tenants may appoint agent

31. (1) A tenant under a residential tenancy agreement who because of—

- (a) intellectual impairment or physical impairment;

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- (b) illiteracy or an inability to read or write English sufficiently well; or
- (c) absence from the residential premises,

is unable to deal with notices or other documents given under the agreement or this Act may appoint a person as the tenant's agent for the purpose of receiving those notices or other documents.

(2) An appointment under this section—

- (a) may be made in the residential tenancy agreement or at any time after the agreement commences; and
- (b) may be revoked at any time by the tenant,

and any such appointment or revocation has no effect until it is notified to the landlord or the landlord's agent.

(3) A landlord, the landlord's agent or the Tribunal, if notified of the appointment, shall give to a person appointed by a tenant, until such time as the appointment expires or is revoked, any notices or other documents required by the residential tenancy agreement or this Act to be given to the tenant.

(4) A notice or other document that is required by this section to be given to a person appointed by the tenant and that is not so given shall be deemed not to have been given to the tenant.

Changes of name or address

32. (1) A landlord under a residential tenancy agreement shall, at or before the time of entering into the agreement, give the tenant notice in writing of—

- (a) the names and residential addresses of the landlord and any person having superior title (for example, a head landlord) to that of the landlord and the name and business address of the landlord's agent (if any); or
- (b) if the landlord or agent is a corporation—the name of the secretary (or, if there is no secretary, of another responsible officer of the corporation) and the address of the registered office of the corporation or, in the case of a statutory corporation, the business address of the corporation.

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(2) A person who succeeds another person as the landlord under a residential tenancy agreement shall, not later than 14 days after succeeding as landlord, give the tenant notice in writing of—

- (a) the names and residential addresses of the new landlord and any other person having superior title to that of the new landlord and the name and business address of the person's agent (if any); or
- (b) if the new landlord or agent is a corporation—the name of the secretary (or, if there is no secretary, of another responsible officer of the corporation) and the address of the registered office of the corporation or, in the case of a statutory corporation, the business address of the corporation.

(3) If a name or an address of which a current landlord is required to give notice under this section changes, a current landlord shall not fail to give the tenant notice in writing of the changed name or address within 14 days of becoming aware of the change.

(4) It is a term of every residential tenancy agreement that a tenant which is a corporation (other than a statutory corporation) shall, if the address of the registered office of the corporation changes, give the landlord notice in writing of the changed address.

DIVISION 2—*Change of landlord or tenant*

Right to assign rights or sub-let

33. It is a term of every residential tenancy agreement that—

- (a) the tenant may, with the prior consent of the landlord, assign the whole or part of the tenant's interest under the agreement or sub-let the residential premises;
- (b) the landlord shall not unreasonably withhold or refuse that consent; and
- (c) the landlord shall not make any charge for giving such a consent, other than for the landlord's reasonable expenses in giving consent.

Attornment (i.e. acknowledgement of purchaser as landlord)

34. A notice of the sale of residential premises subject to a residential tenancy agreement, given to a tenant by or on behalf of the landlord, that—

- (a) specifies the name of the purchaser; and
- (b) directs the tenant to pay all future rent to the purchaser,

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shall be deemed to operate as an attornment as tenant to the purchaser by the tenant at the rent, and subject to the terms of the agreement, as at the date the notice is given.

Recognition of certain persons as tenants

35. (1) A person who is occupying residential premises may—

- (a) on the death of the tenant under a residential tenancy agreement to which the premises are subject; or
- (b) if the tenant no longer occupies the premises,

apply to the Tribunal to be recognised as a tenant under the agreement or to be joined as a party to any proceedings before the Tribunal relating to the premises, or both.

(2) An application by a person to be recognised as a tenant may be made at the same time as any other application or during proceedings before the Tribunal or independently of any such other application or proceedings.

(3) The Tribunal may, on application by a person under this section—

- (a) make an order recognising the person as a tenant under a residential tenancy agreement and the person shall be deemed, for the purposes of this or any other Act and of the agreement, to be a tenant under the agreement; or
- (b) make an order joining the person as a party to proceedings,

or both.

(4) The Tribunal may, if a person has made an application to be recognised as a tenant and if it thinks it appropriate to do so in the circumstances, make an order vesting a tenancy over the residential premises in the person on such of the terms and conditions that applied under the previous residential tenancy agreement for the premises as are in its opinion, having regard to the circumstances of the case, appropriate.

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PART 4**RENTS****DIVISION 1—General matters****Reservation fees**

36. A person shall not, except in such circumstances as may be prescribed, require or receive from—

- (a) a tenant or prospective tenant; or
- (b) any person on behalf of a tenant or prospective tenant,

an amount in consideration for not letting residential premises pending the making of a residential tenancy agreement.

Nature of amounts to be paid for agreement

37. A person shall not require or receive from a tenant or prospective tenant any monetary consideration for or in relation to entering into, renewing, extending or continuing a residential tenancy agreement other than—

- (a) rent;
- (b) a rental bond; and
- (c) such fees or other amounts as may be prescribed.

Rent in advance

38. (1) A person shall not require—

- (a) if the rent under a proposed residential tenancy agreement does not exceed the prescribed rent—more than 2 weeks' rent; or
- (b) if the rent exceeds the prescribed rent—more than 4 weeks' rent,

to be paid as rent in advance under the agreement.

(2) A person shall not require the payment of any rent (other than the first payment) under a residential tenancy agreement for a period of the tenancy to be made before the end of the previous period for which rent has been paid.

(3) In this section—

“prescribed rent” means rent of \$300 per week or such other amount as may be prescribed.

Post-dated cheques

39. A person shall not, in payment of rent under a residential tenancy agreement, require a cheque or other negotiable instrument that is post-dated.

Rent receipts

40. (1) If rent under a residential tenancy agreement is paid in person, any person who receives payment of the rent shall, without delay, give to the person making the payment a receipt for the payment.

(2) If rent is not paid in person, the landlord or the landlord's agent shall, on receipt of the rent, prepare or cause to be prepared a receipt for the rent and make the receipt available for collection by the tenant or post it to the tenant.

(3) A receipt for rent is not a receipt for the purposes of this section unless it includes the following particulars:

- (a) the name of the person who receives the rent or on whose behalf the rent is received;
- (b) the name of the person paying the rent or on whose behalf the rent is paid;
- (c) the address of the residential premises for which the rent is paid;
- (d) the period for which the rent is paid;
- (e) the date on which the rent is received;
- (f) the amount of rent paid.

(4) This section does not apply to rent paid in accordance with an agreement between the landlord and the tenant into an account at a bank, building society or other similar body nominated by the landlord.

Rent records

41. (1) A landlord under a residential tenancy agreement or the landlord's agent shall keep, or cause to be kept, a record showing rent received under the agreement.

(2) A record showing rent received and copies of all rent receipts issued by or on behalf of a landlord under a residential tenancy agreement shall be kept by the landlord or the landlord's agent for a period of not less than 12 months following the receipt of the rent.

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(3) A person shall not knowingly make an entry which is false in a material particular in a record kept under this section.

Penalty rent terms

42. A term of a residential tenancy agreement is void to the extent that it provides that, if the tenant breaches the agreement or this or any other Act, the tenant is liable to pay—

- (a) all or any part of the rent remaining payable under the agreement;
- (b) increased rent;
- (c) any amount as a penalty; or
- (d) any amount as liquidated damages.

Premium rent terms

43. A term of a residential tenancy agreement that provides that, if the tenant does not breach the agreement or this or any other Act—

- (a) the rent shall or may be reduced; or
- (b) the tenant shall or may be granted or paid a rebate or refund of rent or other benefit,

shall be deemed to have been varied from the commencement of the agreement or the commencement of the application of this section to the agreement (whichever is the later) so that the tenant is immediately entitled to the reduction, rebate, refund or other benefit.

DIVISION 2—*Rent increases and excessive rents***Application of Division**

44. This Division applies to a rent increase even though the amount of the rent increase, or a method for calculating the amount of the increase, is set out in a residential tenancy agreement.

Increase of rent

45. (1) The rent payable by a tenant under a residential tenancy agreement shall not be increased except by notice in writing given to the tenant specifying the amount of the increased rent and the day from which the increased rent is payable.

(2) A day specified as the day from which increased rent is payable shall not be earlier than 60 days after the day on which notice of the increase was given under this section.

(3) A notice of increase of rent given in accordance with this section (and not withdrawn by the landlord or the landlord's agent or affected by any order of the Tribunal) varies the residential tenancy agreement so that the increased rent specified in the notice is payable under the agreement from the day specified in the notice.

(4) The rent payable by a tenant under a residential tenancy agreement that creates a tenancy for a fixed term shall not be increased during the currency of the term unless the amount of the increase, or a method for calculating the amount of the increase, is set out in the agreement.

(5) A rent increase (including a rent increase permitted under subsection (4) or provided for in any other residential tenancy agreement) is not payable by a tenant under a residential tenancy agreement unless the rent is increased in accordance with this section or by an order of the Tribunal.

(6) A landlord shall not contravene or fail to comply with this section.

Tenant may apply for an order that a rent increase is excessive

46. A tenant under a residential tenancy agreement may apply to the Tribunal for an order declaring that a rent increase is excessive not later than 30 days—

- (a) after being given notice of the rent increase; or
- (b) after being given notice of a rent increase payable under a proposed residential tenancy agreement for residential premises already occupied by the tenant.

Tenant may apply for an order that rent is excessive

47. (1) A tenant under a residential tenancy agreement may, at any time, apply to the Tribunal for an order declaring that the rent payable under a residential tenancy agreement or a proposed residential tenancy agreement for residential premises already occupied by the tenant is excessive, having regard to the reduction or withdrawal by the landlord of any goods, services or facilities provided with the premises.

(2) This section applies whether or not the goods, services or facilities are provided under the agreement or a separate contract, agreement or arrangement or were provided under a previous contract, agreement or arrangement.

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Matters to be considered in determining rent applications

48. The Tribunal may, in determining whether or not a rent increase or rent payable under a residential tenancy agreement or a proposed residential tenancy agreement for residential premises is excessive, have regard to the general market level of rents for comparable premises (other than premises let by a government department, administrative office or public authority) in the locality or a similar locality and may also have regard to—

- (a) the value of the residential premises;
- (b) the amount of any outgoings in respect of the residential premises required to be borne by the landlord under the residential tenancy agreement or proposed agreement;
- (c) the estimated cost of any services provided by the landlord or the tenant under the residential tenancy agreement or proposed agreement;
- (d) the value and nature of any fittings, appliances or other goods, services or facilities provided with the residential premises;
- (e) the accommodation and amenities provided in the residential premises and the state of repair and general condition of the premises;
- (f) any work done or intended to be done to the premises by or on behalf of the tenant, to which the landlord has consented; and
- (g) any other relevant matter.

Orders as to excessive rent increases or rents

49. (1) The Tribunal may, on application by a tenant under section 46 or 47, and after considering any matters it considers appropriate under section 48, determine that a rent increase or rent is excessive.

(2) If the Tribunal determines that a rent increase is excessive, the Tribunal may order that from a day specified by the Tribunal, not being earlier than the day from which the increased rent was payable, the rent shall not exceed an amount specified by the Tribunal and may make such other orders as it thinks fit.

(3) If the Tribunal determines that a rent is excessive, the Tribunal may order that from a day specified by the Tribunal, not being earlier than the date of the tenant's application to the Tribunal, the rent shall not exceed an amount specified by the Tribunal and may make such other orders as it thinks fit.

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(4) An order made by the Tribunal specifying a maximum amount of rent—

- (a) has effect for such period, not exceeding 12 months, as is specified by the Tribunal in the order; and
- (b) binds only the parties to the residential tenancy agreement or the proposed residential tenancy agreement under which the rent is payable.

Payments under separate agreements

50. If—

- (a) the residential premises occupied by a tenant are held under a residential tenancy agreement; and
- (b) goods or fittings in, or connected with the tenant's occupation of, the premises are let to the tenant by a separate agreement,

the Tribunal may, in making any order under section 49, declare the separate agreement to be part of the residential tenancy agreement and may make orders under that section in respect of that agreement as if any amounts payable under it were payable under the residential tenancy agreement.

Interim orders suspending rent increases or rent

51. If an application is made to the Tribunal for an order that a rent increase or rent is excessive, the Tribunal may, if it is of the opinion that the circumstances so require, make an order that has the effect of suspending payment of the whole or part of the rent increase or the rent until such time as the Tribunal finally determines the application.

Contravention of rent order

52. (1) A landlord shall not wilfully contravene or fail to comply with an order that rent shall not exceed an amount specified by the Tribunal.

(2) A person (other than a landlord) shall not demand, require or receive any rent from a tenant of an amount exceeding an amount specified by the Tribunal.

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(3) A court before which proceedings for an offence under subsection (1) or (2) have been brought or the Tribunal, on application by a tenant, may (in addition to any other penalty) order the person who committed the offence or any person on whose behalf that person acted to pay to the tenant against whom the offence was committed an amount equal to the amount of any rent unlawfully received from the tenant.

PART 5

TERMINATION OF RESIDENTIAL TENANCY AGREEMENTS

DIVISION 1—*Termination generally***Termination of residential tenancy agreements**

53. A residential tenancy agreement terminates only in one or more of the following circumstances:

- (a) if the landlord or the tenant gives notice of termination under this Part and—
 - (i) the tenant delivers up vacant possession of the residential premises on or after the day specified in the notice; or
 - (ii) the Tribunal makes an order under section 64 (which relates to applications to the Tribunal by the landlord for termination) terminating the agreement;
- (b) if the Tribunal makes an order terminating the agreement;
- (c) if a person having superior title (for example, a head landlord) to that of the landlord becomes entitled to possession of the residential premises;
- (d) if a person succeeding to the title of the landlord (for example, a purchaser) becomes entitled to possession of the residential premises to the exclusion of the tenant;
- (e) if a mortgagee in respect of the residential premises becomes entitled to possession of the premises to the exclusion of the tenant;
- (f) if the tenant abandons the residential premises;
- (g) if the tenant delivers up vacant possession of the residential premises with the prior consent of the landlord, whether or not that consent is subsequently withdrawn;

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- (h) by merger (that is, where the interests of the landlord and the tenant become vested in the one person);
- (i) by disclaimer (for example, on repudiation by the tenant accepted by the landlord).

Apportionment and recovery of rent on termination

54. The rent payable under a residential tenancy agreement accrues from day to day and on termination the appropriate amount is payable.

Breach or notice of termination not waived by acceptance of rent

55. A demand for, any proceedings for the recovery of, or acceptance of, rent payable under a residential tenancy agreement by a landlord—

- (a) does not operate as a waiver of—
 - (i) any breach of the agreement; or
 - (ii) any notice of termination on the ground of breach of the agreement given by the landlord; and
- (b) is not evidence of the creation of a new tenancy.

DIVISION 2—Notices of termination**Notice of termination on ground that premises are being sold**

56. (1) A landlord may give notice of termination of a residential tenancy agreement to the tenant on the ground that the landlord has (after entering into the agreement) entered into a contract for the sale of the residential premises under which the landlord is required to give vacant possession of the premises.

(2) A notice of termination given under this section shall not specify a day earlier than 30 days after the day on which the notice is given as the day on which vacant possession of the residential premises is to be delivered up to the landlord.

(3) This section does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term.

Notice of termination on ground of breach of agreement

57. (1) A landlord or a tenant may give notice of termination of a residential tenancy agreement to the other party on the ground that the other party has breached a term of the agreement.

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(2) A notice of termination given under this section shall not specify a day earlier than 14 days after the day on which the notice is given as the day on which vacant possession of the residential premises is to be or will be delivered up to the landlord.

(3) A notice of termination given by a landlord on the ground of a breach of the agreement to pay rent has no effect unless the rent has remained unpaid in breach of the agreement for not less than 14 days before the notice is given.

(4) A notice of termination given by a landlord on the ground of a breach of the agreement to pay rent is not ineffective because of any failure of the landlord or the landlord's agent to make a prior formal demand for payment of the rent.

(5) A notice of termination of a residential tenancy agreement that creates a tenancy for a fixed term given under this section is not ineffective because the day specified as the day on which vacant possession of the residential premises is to be or will be delivered up to the landlord is earlier than the day the term ends.

Notice of termination by landlord without any ground

58. (1) A landlord may give notice of termination of a residential tenancy agreement without specifying any ground for the termination.

(2) A notice of termination given under this section shall not specify a day earlier than 60 days after the day on which the notice is given as the day on which vacant possession of the residential premises is to be delivered up to the landlord.

(3) This section does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term.

Notice of termination by tenant without any ground

59. (1) A tenant may give notice of termination of a residential tenancy agreement without specifying any ground for the termination.

(2) A notice of termination given under this section shall not specify a day earlier than 21 days after the day on which notice is given as the day on which vacant possession of the residential premises will be delivered up to the landlord, unless it specifies an earlier day to which the landlord has consented.

(3) This section does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term.

Notice of termination of fixed term agreement without any ground

60. (1) A landlord or a tenant may give notice of termination of a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term without specifying any ground for the termination.

(2) A notice of termination given under this section shall not specify a day earlier than 14 days after the day on which the notice is given or the day the term of the residential tenancy agreement ends, whichever is the later, as the day on which vacant possession of the residential premises is to be or will be delivered up.

Notice of termination where agreement frustrated

61. (1) If residential premises under a residential tenancy agreement are, otherwise than as a result of a breach of the agreement, destroyed or rendered wholly or partly uninhabitable or cease to be lawfully usable for the purpose of a residence or are appropriated or acquired by any authority by compulsory process—

- (a) the rent abates accordingly; and
- (b) the landlord or the tenant may give immediate notice of termination to the other party.

(2) A notice of termination of a residential tenancy agreement that creates a tenancy for a fixed term given under this section is not ineffective because the notice is given before the day the term ends.

Effect of notice of termination of periodic tenancy

62. A notice of termination of a residential tenancy agreement that creates a periodic tenancy given under this Act is not ineffective because the day for delivering up vacant possession of the residential premises is not—

- (a) the last day of a period of the tenancy; or
- (b) any other day on which the tenancy would (for breach or any other reason) have ended if this Act had not been enacted.

Form of notice of termination

63. (1) A notice of termination of a residential tenancy agreement given to a tenant by a landlord shall—

- (a) be in writing;
- (b) be signed by the landlord or the landlord's agent;

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- (c) identify the residential premises the subject of the agreement;
- (d) specify the day on which vacant possession of the residential premises is to be delivered up to the landlord; and
- (e) specify and give particulars of the ground (where applicable) on which the notice is given.

(2) A notice of termination of a residential tenancy agreement given to a landlord by a tenant shall—

- (a) be in writing;
- (b) be signed by the tenant or the agent of the tenant (if any) appointed under section 31;
- (c) identify the residential premises the subject of the agreement;
- (d) specify the day on which vacant possession of the residential premises will be delivered up to the landlord; and
- (e) specify and give particulars of the ground (where applicable) on which the notice is given.

DIVISION 3—*Termination of residential tenancy agreements by Tribunal*
Application to Tribunal by landlord for termination and order for possession

64. (1) If—

- (a) a landlord or a tenant gives notice of termination of a residential tenancy agreement under this Part; and
- (b) the tenant fails to deliver up vacant possession of the residential premises on the day specified,

the landlord may, not later than 30 days after that day, apply to the Tribunal for an order terminating the agreement and an order for possession of the premises.

(2) The Tribunal shall, on application by a landlord under this section, make an order terminating the agreement if it is satisfied—

- (a) in the case of a notice given by the landlord on a ground referred to in section 56 (which relates to termination on the ground that the residential premises are being sold), section 57 (which relates to termination on the ground of breach of the agreement) or section 61 (which relates to termination where the agreement is frustrated)—
 - (i) that the landlord has established the ground; and

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- (ii) if the ground is a breach of the residential tenancy agreement, that the breach, in the circumstances of the case, is such as to justify termination of the agreement;
- (b) that the tenant has seriously or persistently breached the residential tenancy agreement; or
- (c) that, having considered the circumstances of the case, it is appropriate to do so.

(3) Except as provided by section 66, the Tribunal shall not make an order terminating a residential tenancy agreement under this section unless it is satisfied that notice of termination was given and that it was given in accordance with this Part.

(4) If the Tribunal makes an order terminating a residential tenancy agreement under this section, the Tribunal shall also make an order for possession of the residential premises specifying the day on which the order takes effect.

Suspension or refusal of orders for termination

65. (1) The Tribunal may suspend the operation of an order for possession of residential premises (other than premises which are part of the landlord's principal place of residence) for a specified period if it is satisfied that it is desirable to do so, having regard to the relative hardship likely to be caused to the landlord and the tenant by the suspension.

(2) Notwithstanding section 64, the Tribunal may refuse to make an order terminating an agreement and an order for possession under that section if it is satisfied—

- (a) that the landlord was wholly or partly motivated to give notice of termination by the fact that—
 - (i) the tenant had applied or proposed to apply to the Tribunal for an order;
 - (ii) the tenant had complained to a governmental authority or had taken some other action to secure or enforce his or her rights as a tenant; or
 - (iii) an order of the Tribunal was in force in relation to the landlord and the tenant;
- (b) that in the case of a notice given by the landlord on the ground of a breach of the residential tenancy agreement by the tenant—the tenant has remedied the breach; or

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- (c) that in the case of a notice given by the landlord on the ground that the landlord has entered into a contract for the sale of the residential premises—the sale is not proceeding.

(3) In this section, a reference to a tenant includes a reference to a person who has applied to the Tribunal for an order under section 35 (which relates to the recognition of certain persons as tenants).

Tribunal may waive defect in notice of termination

66. The Tribunal may, if it thinks it appropriate to do so in the special circumstances of the case, make an order terminating a residential tenancy agreement and an order for possession of residential premises even though there is a defect in any notice of termination of the agreement.

Notice of termination not required in certain cases

67. An application under section 68, 69 or 70 may be made whether or not notice of termination has been given.

Tribunal may terminate residential tenancy agreement where tenant causes serious damage or injury

68. (1) The Tribunal may, on application by a landlord under a residential tenancy agreement, make an order terminating the agreement if it is satisfied that the tenant has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit—

- (a) serious damage to the residential premises; or
- (b) injury to the landlord, the landlord's agent or any person in occupation of or permitted on adjoining or adjacent premises.

(2) If the Tribunal makes an order terminating a residential tenancy agreement under this section, the Tribunal shall also make an order for possession of the residential premises taking effect immediately.

Tribunal may terminate residential tenancy agreement where landlord would otherwise suffer undue hardship

69. (1) The Tribunal may, on application by a landlord under a residential tenancy agreement, make an order terminating the agreement if it is satisfied that the landlord would, in the special circumstances of the case, suffer undue hardship if the landlord were to take steps to terminate the agreement under any other provision of this Act.

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(2) If the Tribunal makes an order terminating a residential tenancy agreement under this section, the Tribunal—

- (a) shall also make an order for possession of the residential premises specifying the day on which the order takes effect; and
- (b) may make such other orders (including an order that the landlord pay to the tenant compensation for the tenant's loss of the tenancy) as it thinks fit.

Tribunal may terminate residential tenancy agreement for breach

70. (1) The Tribunal may, on application by a tenant under a residential tenancy agreement, make an order terminating the agreement if it is satisfied—

- (a) that the landlord has breached the agreement; and
- (b) that the breach, in the special circumstances of the case, is such as to justify termination of the agreement under this section.

(2) If the Tribunal makes an order terminating a residential tenancy agreement under this section, the Tribunal shall also make an order for possession of the residential premises specifying the day on which the order takes effect.

DIVISION 4—Recovery of possession of residential premises

Prohibition on certain recovery proceedings in courts

71. No proceedings in the Supreme Court, the District Court or a Local Court to obtain recovery of possession of residential premises subject to a residential tenancy agreement shall be commenced by a landlord against a tenant or former tenant of the landlord.

Recovery of possession of residential premises prohibited except by order

72. (1) A person shall not, except in accordance with a judgment, warrant or order of a court or an order of the Tribunal, enter residential premises or any part of such premises of which another person has possession—

- (a) under a residential tenancy agreement; or
- (b) as a former tenant holding over after termination of a residential tenancy agreement,

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for the purpose of recovering possession of the premises or part of the premises.

(2) This section applies to a person who enters residential premises or any part of such premises, whether on his or her own behalf or on behalf of another person.

(3) A court before which proceedings for an offence under this section are brought may (in addition to any other penalty) order the person who committed the offence or any person on whose behalf that person acted to pay to the person against whom the offence was committed such compensation as it thinks fit.

Enforcement of orders for possession

73. (1) If—

(a) an order for possession of residential premises is made by the Tribunal; and

(b) the person in whose favour the order was made informs the Tribunal that the order has not been complied with,

the Chairperson or any other member may, on receipt of the information and on application by the person, issue a warrant, in or to the effect of the prescribed form, authorising a sheriff's officer to enter the residential premises and to give possession to the person in whose favour the order was made.

(2) A sheriff's officer enforcing an order for possession of residential premises may enter the premises and take all such steps as are reasonably necessary to enforce the order and shall produce the warrant authorising the enforcement.

(3) A member of the police force may, at the request of a sheriff's officer, assist the sheriff's officer to enforce the order for possession.

(4) A sheriff's officer enforcing an order for possession may use such force as is reasonably necessary for that purpose.

(5) A person shall not hinder or obstruct a sheriff's officer in the exercise of the functions conferred by this section.

(6) No matter or thing done by a sheriff's officer or member of the police force, in the exercise or purported exercise of functions conferred by this section, shall, if the matter or thing was done in good faith for the purposes of enforcing an order for possession, subject a sheriff's officer or member of the police force so doing personally to any action, liability, claim or demand.

Liability of tenant remaining in possession

74. (1) If a tenant fails to comply with an order for possession of residential premises made by the Tribunal, the tenant is liable—

- (a) to pay compensation to the landlord for any loss caused to the landlord by that failure; and
- (b) to pay an occupation fee to the landlord equal to the amount of rent that would have been payable by the tenant for the residential premises for the period the tenant remains in possession after termination of the residential tenancy agreement.

(2) The Tribunal may, on application by a landlord under this section made not later than 30 days after the day on which the order for possession took effect, order a tenant to pay to the landlord such compensation or an amount equal to an occupation fee, or both, as it thinks fit.

Notice of proposed recovery of premises by person with superior title

75. (1) This section applies where a person ("the plaintiff") brings proceedings in a court or the Tribunal (whether under this Act or otherwise) for the recovery of possession of residential premises.

(2) The court or Tribunal shall not give judgment or make an order for possession, unless it is satisfied—

- (a) as to whether or not there is a person in possession of the residential premises as—
 - (i) a tenant under a residential tenancy agreement; or
 - (ii) a former tenant holding over after termination of a residential tenancy agreement; and
- (b) if there is such a person in possession of the residential premises and the plaintiff is not the landlord or former landlord under the residential tenancy agreement—that the person has had reasonable notice of the proceedings brought by the plaintiff.

(3) Failure to comply with this section does not invalidate or otherwise affect the judgment or order.

Order for tenancy against person with superior title

76. (1) This section applies to a person who is or was in possession of residential premises as—

- (a) a tenant under a residential tenancy agreement; or

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- (b) a former tenant holding over after termination of a residential tenancy agreement,

at a time when proceedings for the recovery of possession of the premises had been commenced before a court or the Tribunal (whether under this Act or otherwise) by a person ("the plaintiff") who is not the landlord or former landlord under the agreement.

(2) A person to whom this section applies may apply for an order under this section and such an application may be made to—

- (a) the court or Tribunal before which the proceedings are pending; or
- (b) if the proceedings have been completed or possession has been recovered—the Tribunal,

and must be made within a reasonable time after the applicant was given notice of the proceedings or (if no notice was given) within a reasonable time after the recovery of possession of the residential premises.

(3) The court or Tribunal may, on such an application, and if it thinks it appropriate to do so in the special circumstances of the case, make an order vesting a tenancy over the residential premises in the applicant.

(4) The tenancy shall be held of the plaintiff, and on such terms and conditions as the court or Tribunal thinks fit, having regard to the circumstances of the case.

(5) Such an application or order may be made, even though—

- (a) notice was not given to the applicant of the proceedings brought by the plaintiff; or
- (b) the proceedings brought by the plaintiff have been completed or possession of the residential premises has been recovered by the plaintiff.

DIVISION 5—*Abandoned premises and goods*

Abandoned premises

77. (1) The Tribunal may, on application by a landlord under a residential tenancy agreement, make an order that declares that the residential premises were abandoned by the tenant on a day specified by the Tribunal.

(2) The tenant shall be deemed for the purposes of this Act to have abandoned the residential premises on that day.

Right of landlord to compensation where tenant abandons premises

78. (1) If a tenant under a residential tenancy agreement abandons the residential premises, the tenant is liable to pay compensation to the landlord for any loss (including loss of rent) caused by the abandonment.

(2) The landlord shall take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by taking those steps.

(3) The Tribunal may, on application by the landlord, order a tenant to pay to the landlord such compensation (including compensation for loss of rent) as it thinks fit.

Goods abandoned by tenant after residential tenancy agreement is terminated

79. (1) If a residential tenancy agreement is terminated and goods are left by the tenant on the residential premises, the former landlord may—

- (a) apply to the Tribunal for an order under this section; or
- (b) dispose of the goods in accordance with any provision made by the regulations,

or both.

(2) The Tribunal may, on application by a former landlord under this section, make any one or more of the following orders:

- (a) an order authorising the removal, destruction or disposal of abandoned goods;
- (b) an order authorising the sale of abandoned goods;
- (c) an order directing that notice of any action or proposed action in relation to abandoned goods be given to the former tenant or any other person;
- (d) an order as to the manner of sale of abandoned goods;
- (e) an order as to the proceeds of sale of abandoned goods;
- (f) any ancillary order which the Tribunal, in the circumstances, thinks appropriate.

(3) A purchaser of goods sold by a landlord in accordance with an order of the Tribunal or the regulations acquires a good title to the goods in defeasance of the interest of the former tenant or any other person who has an interest in the goods.

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(4) A former landlord does not incur any liability in respect of the removal, destruction, disposal or sale of goods in accordance with an order of the Tribunal or the regulations.

PART 6

THE RESIDENTIAL TENANCIES TRIBUNAL OF NEW SOUTH WALES

DIVISION 1—*Constitution of the Tribunal***Constitution of the Tribunal**

80. (1) There is constituted by this Act a Tribunal to be called the Residential Tenancies Tribunal of New South Wales, which shall consist of—

- (a) a person who is, or is qualified for appointment as, a Magistrate and is appointed by the Governor as Chairperson of the Tribunal;
- (b) such other full-time members who are barristers or solicitors, or who are eligible to be admitted as barristers or solicitors, of the Supreme Court as may be appointed by the Governor as full-time members of the Tribunal; and
- (c) such part-time members as may be appointed by the Governor as part-time members of the Tribunal.

(2) The Chairperson and other full-time members shall devote the whole of their time to the duties of their offices under this Act, except as permitted by this Act or with the consent of the Minister.

(3) The Tribunal shall have a seal of which all courts and persons acting judicially shall take judicial notice.

(4) Schedule 1 has effect with respect to the members.

Registrar, Deputy Registrars and staff of the Tribunal

81. (1) A Registrar and Deputy Registrars of the Tribunal shall be employed under the Public Service Act 1979.

(2) The Registrar has, or Deputy Registrars have, such functions as are conferred or imposed on the Registrar or Deputy Registrars by or under this or any other Act or by the Tribunal in the exercise of its functions.

(3) The Tribunal may—

- (a) with the approval of the Minister; and
- (b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

Immunity of members and others

82. A member, in the exercise of the functions of a member, and the Registrar and any Deputy Registrar, in the exercise of jurisdiction or functions conferred, imposed or delegated by or under this or any other Act, have the same protection and immunity as a Justice has in the exercise of the functions of a Justice under the Justices Act 1902.

DIVISION 2—Jurisdiction and functions of the Tribunal

Jurisdiction and functions of the Tribunal

83. (1) The Tribunal has such jurisdiction as is conferred, and such functions as are conferred or imposed, on it by or under this or any other Act.

(2) The Tribunal, wherever sitting, has jurisdiction throughout New South Wales.

(3) The Tribunal has jurisdiction in respect of a claim by a landlord or a tenant under a residential tenancy agreement in respect of a rental bond.

Delegation by the Chairperson or Registrar

84. (1) The Chairperson may, by instrument in writing, delegate to the Registrar or a Deputy Registrar, with such limitations and on such conditions as the Chairperson thinks fit—

- (a) the exercise of such part of the jurisdiction of the Tribunal as is prescribed for the purposes of this section; and
- (b) the exercise of such functions (other than the powers conferred by section 101 (6) and this power of delegation) as are conferred on the Chairperson,

and may, by instrument in writing, revoke (wholly or partly) the delegation.

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(2) The Registrar may, by instrument in writing, delegate to a Deputy Registrar, with such limitations and on such conditions as the Registrar thinks fit, the exercise of such functions as are conferred on the Registrar by this or any other Act and may, by instrument in writing, revoke (wholly or partly) the delegation.

(3) A jurisdiction or function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Tribunal, Chairperson or Registrar, as appropriate.

(4) A delegation under this section does not prevent the exercise of a jurisdiction or function by the Tribunal, Chairperson or Registrar.

(5) A jurisdiction or function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

Orders of the Tribunal

85. (1) The Tribunal may, in any proceedings before it, make any one or more of the following orders:

- (a) an order for which an application may be made by any person (whether under this or any other Act) to the Tribunal;
- (b) an order arising out of the Tribunal's jurisdiction with respect to rental bonds;
- (c) an order that varies or sets aside, or stays or suspends the operation of, any order made in the proceedings or in earlier proceedings;
- (d) any ancillary order which the Tribunal thinks appropriate.

(2) An order may be made by the Tribunal—

- (a) in the absence of any party; or
- (b) as an interim order

or both.

(3) The Tribunal shall not make an order for—

- (a) the payment of an amount that exceeds \$5,000 or such other amount as may be prescribed; or
- (b) the performance of work or the taking of steps the cost of which may or will exceed \$5,000 or such other amount as may be prescribed.

DIVISION 3—Hearings**Form of applications to the Tribunal**

86. (1) The manner of making an application which may be made to the Tribunal under this or any other Act is by lodging a written application containing the prescribed particulars, together with the prescribed fee, with the Registrar or a Deputy Registrar.

(2) The Registrar or Deputy Registrar may waive payment of the prescribed fee if of the opinion that, having regard to the means of the applicant and any other relevant matter, it is appropriate to do so.

Notice of hearing and conduct of proceedings

87. (1) The Chairperson, the Registrar or a Deputy Registrar shall fix a time and place for the holding of proceedings before the Tribunal and shall notify each party to the proceedings in the prescribed manner of that time and place.

(2) The Tribunal shall give each party to proceedings before it a reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Tribunal.

(3) If a party to proceedings before the Tribunal who has been notified under this section fails to attend at the time and place notified, the proceedings may be held in the absence of the party.

(4) The Tribunal may hear 2 or more applications jointly.

Parties to proceedings

88. (1) If a party to proceedings before the Tribunal has a right to proceed against 2 or more persons having a joint liability, it is sufficient if any one or more of those persons is or are served with process in the proceedings, and a decision in the proceedings may be given or entered up and enforced against the person or persons subject to the liability.

(2) Section 97 (joint liability) of the Supreme Court Act 1970 applies to and in respect of a decision given or entered up in proceedings before the Tribunal in the same way as it applies to and in respect of a judgment given in proceedings before the Supreme Court.

(3) A legal personal representative may bring or defend proceedings before the Tribunal as if the representative were bringing or defending proceedings in the representative's own right.

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(4) If, at any time before or during proceedings before it, the Tribunal is of the opinion that a person ought to be joined as a party to the proceedings, the Tribunal may, by notice in writing given to the person or by oral direction given during the proceedings, join the person as a party to the proceedings.

Amendment of application

89. The Tribunal may, before or during proceedings before it, amend the application to which the proceedings relate as it thinks fit, either at the request of the applicant or of its own motion with the consent of the applicant.

Withdrawal of application

90. (1) The Tribunal or the Registrar may, before or during proceedings before the Tribunal, consent to the withdrawal of an application made to the Tribunal.

(2) If an application is withdrawn, the Tribunal or the Registrar, as the case may be, may order the person who made the application to pay the whole or part of any costs incurred by any other party.

Adjournment of proceedings

91. (1) The Tribunal may from time to time adjourn proceedings before it to such times and places and for such purposes as it considers necessary or desirable.

(2) The Registrar or a Deputy Registrar shall give to any party to proceedings that have been adjourned, who was not present or represented when the proceedings were adjourned, a notice of the time and place to which the proceedings are adjourned.

Stay of proceedings

92. (1) At any stage in proceedings before it the Tribunal may order that the proceedings be stayed.

(2) The Registrar or a Deputy Registrar shall give to any party to proceedings that have been stayed, who was not present or represented when the proceedings were stayed, a notice that the proceedings are stayed.

Proceedings before the Tribunal

93. (1) Proceedings before the Tribunal shall be held as in open court.

(2) Sittings of the Tribunal, and the constitution of the Tribunal at each sitting, shall be arranged and determined by the Chairperson.

(3) Proceedings before the Tribunal shall be heard and determined by one member sitting alone.

(4) In any proceedings before it, the Tribunal—

(a) is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit; and

(b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

(5) The Tribunal or the Registrar may, in respect of any proceedings or proposed proceedings before the Tribunal, request a report from, or other assistance by, the Commissioner for Consumer Affairs.

Presentation of cases

94. (1) Each party to proceedings before the Tribunal shall have the carriage of the party's own case.

(2) A party to proceedings before the Tribunal or a person who applies to be made a party to the proceedings is not entitled to be represented by any other person unless—

(a) the representation is approved by the Tribunal; or

(b) any other party is represented by the Commissioner for Consumer Affairs or by a barrister, solicitor or agent for the Commissioner.

(3) The Tribunal shall not approve of another person representing a party in proceedings before it unless it appears to the Tribunal—

(a) that the representation should be permitted as a matter of necessity;

(b) that the party would otherwise be unfairly disadvantaged; or

(c) in the case of a landlord—that the landlord's agent should be permitted to represent the landlord in the course of carrying out his or her usual functions as the landlord's agent,

and the Tribunal is of the opinion that any other party will not be unfairly disadvantaged by the representation.

(4) This section does not prevent an officer (within the meaning of the Companies (New South Wales) Code) of a corporation from representing the corporation.

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(5) Nothing in this section prevents the Commissioner for Consumer Affairs from taking or defending proceedings in accordance with section 96.

(6) Contravention of any provision of this section does not invalidate any proceedings before the Tribunal in which the contravention occurs or any order made in the proceedings by the Tribunal.

Commissioner for Consumer Affairs may represent tenant

95. In any proceedings before the Tribunal, a tenant may, notwithstanding anything in section 94, be represented by the Commissioner for Consumer Affairs or by a barrister, solicitor or agent for the Commissioner.

Commissioner for Consumer Affairs may take or defend proceedings

96. (1) If a tenant, not being a corporation, has made a complaint to the Commissioner for Consumer Affairs and the Commissioner—

- (a) after investigating the complaint, is satisfied that the tenant may have a right to take or defend proceedings before the Tribunal; and
- (b) is of the opinion that it is in the public interest that the Commissioner should take or defend those proceedings on behalf of the tenant,

the Commissioner may, with the consent of the tenant, take or defend those proceedings on behalf of and in the name of the tenant.

(2) If the Minister so directs and the tenant consents, the Commissioner shall take or defend proceedings before the Tribunal on behalf of a tenant.

Conduct of proceedings by Commissioner for Consumer Affairs

97. If the Commissioner for Consumer Affairs takes or defends proceedings before the Tribunal on behalf of a tenant—

- (a) the Commissioner shall have the conduct of those proceedings on behalf of the tenant, may appear personally or by barrister, solicitor or agent and may do all such things as are necessary or expedient to give effect to an order or a decision of the Tribunal;
- (b) the Commissioner is liable to pay the costs (if any) of the tenant; and
- (c) the tenant is liable to pay any other amount that the Tribunal orders the tenant to pay.

Intervention by Commissioner for Consumer Affairs

98. (1) Without limiting section 96, the Commissioner for Consumer Affairs may, if the Commissioner is of the opinion that it would be in the public interest to do so, or, at the direction of the Minister shall, intervene, and has a right to be heard personally or by barrister, solicitor or agent, in any proceedings arising under any Act before the Tribunal.

(2) The Commissioner, on intervening in any proceedings, becomes a party to the proceedings and has all the rights of such a party.

Extension of time

99. (1) Notwithstanding any other provision of this Act, the Tribunal may, of its own motion or on application by any person, extend the period of time for the doing of anything under this Act.

(2) Such an application may be made even though the relevant period of time has expired.

Procedure of the Tribunal

100. (1) If the manner or form of procedure for taking any step in proceedings before the Tribunal is not prescribed by this Act—

- (a) the member before whom the proceedings are being or are to be held may give directions as to what manner or form of procedure is to be followed; and
- (b) any step taken in accordance with a direction so given is, for the purposes of the proceedings, regular and sufficient.

(2) Any question with respect to procedure that arises in proceedings before the Tribunal shall be decided by the Tribunal in the proceedings.

Summons of witnesses

101. (1) The Registrar or a Deputy Registrar shall, at the direction of the Tribunal in proceedings before it or at the request of a party to any such proceedings, issue a summons requiring a person—

- (a) to attend the proceedings at a time and place specified in the summons as a witness to give evidence; or
- (b) to produce any record in the person's custody or under the person's control that the person is required by the summons to produce,

or both.

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(2) It is sufficient compliance with a summons issued only for the production of a record if the record is produced to the Registrar or a Deputy Registrar at an address specified for that purpose in the summons at any time before the proceedings at which the record is required to be produced.

(3) If a person is required by a summons to produce a record and the record is—

- (a) not in writing;
- (b) not written in the English language; or
- (c) not decipherable on sight,

the summons shall be taken to require the person to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in the English language and decipherable on sight, containing the whole of the information in the record.

(4) A witness summoned at the direction of the Tribunal is entitled to be paid such fees and allowances as are prescribed.

(5) A summons issued at the request of a party does not have effect unless, not later than a reasonable time before the day on which the attendance of the witness is required by the summons, tender is made of an amount in respect of the reasonable expenses of complying with the requirements of the summons.

(6) If a person fails to attend the proceedings at a time and place specified in a summons under this section—

- (a) the Chairperson or any other member has all the functions of a Justice under section 66 of the Justices Act 1902 (which relates to the issue of warrants on non-appearance to summons) to issue a warrant for the apprehension of the person and to further deal with that person; and
- (b) section 66 of the Justices Act 1902 applies to the exercise of those functions as if a reference in that section—
 - (i) to a person who does not appear at a time and place appointed by a summons and who is a witness—were a reference to the person;
 - (ii) to a Justice—were a reference to the Chairperson or member; and

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- (iii) to costs and expenses—were a reference to such fees and allowances as are prescribed or the reasonable expenses of complying with the requirements of the summons, as the case requires.

(7) Sections 64 (form of warrant) and 65 (no objection for defect or variance) of the Justices Act 1902 apply to a warrant issued by the Chairperson or any other member in the same way as they apply to a warrant issued under section 66 of that Act.

Tribunal may set aside summons

102. The Tribunal may, of its own motion, or on the motion of the Registrar or a Deputy Registrar or on application by a party to proceedings before it or by a person to whom a summons is issued by the Registrar or a Deputy Registrar, set aside a summons if it is satisfied—

- (a) that the request for the summons was frivolous, vexatious, misconceived or lacking in substance; or
- (b) that the request for any other reason amounted to an abuse of the process of the Tribunal.

Examination of witnesses

103. (1) The member before whom proceedings are being held may administer an oath to any person appearing as a witness before the Tribunal, whether or not the witness has been summoned, and allow the witness to be examined and cross-examined on oath.

(2) A witness summoned to attend or appearing before the Tribunal has the same protection and, without affecting any penalty that may be imposed under this Act, is subject to the same liabilities as a witness would have or be subject to in proceedings before a Local Court.

Evidence before the Tribunal

104. In proceedings before it, the Tribunal may, in its discretion—

- (a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal, whether constituted in the State or elsewhere, and draw any conclusions of fact from that transcript that it considers proper;
- (b) adopt any finding, decision or judgment of a court or tribunal that may be relevant to the proceedings and

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- (c) receive in evidence any report of the Commissioner for Consumer Affairs that may be relevant to the proceedings but only if a copy of that report has been made available for inspection by every party present at the proceedings.

Inspection and retention of records

105. (1) The Tribunal may do any or all of the following:

- (a) inspect any record or statement produced before it;
- (b) retain it for such period as it thinks necessary for the purposes of the proceedings for or in relation to which it was produced;
- (c) make copies of the record or statement or any part of the record or statement.

(2) If a record or statement is produced before, and retained by, the Tribunal, the person otherwise entitled to possession of the record or statement is, on request, entitled to be supplied, as soon as practicable, with a copy certified by the Registrar or a Deputy Registrar to be a true copy.

(3) A record or statement so certified is admissible as evidence in all courts as if it were the original record or statement.

Referral of questions of law to Supreme Court by Tribunal

106. (1) A reference under this section shall be made in accordance with rules of the Supreme Court.

(2) If, in proceedings before it, a question arises with respect to a matter of law, the Tribunal may decide the question or may refer it to the Supreme Court for decision.

(3) If a question with respect to a matter of law is referred to the Supreme Court by the Tribunal—

- (a) the Tribunal shall not make an order or a decision to which the question is relevant until the Supreme Court has decided the question;
- (b) on deciding the question, the Supreme Court shall remit its decision to the Tribunal; and
- (c) the Tribunal shall not proceed in a manner, or make an order or a decision, that is inconsistent with the decision of the Supreme Court.

(4) Any costs to the parties to proceedings arising out of the referral of a question with respect to a matter of law to the Supreme Court are not payable by the parties but shall be paid as a cost of the administration of this Act.

(5) For the purposes of this section, a reference to a matter of law includes a reference to a matter relating to the jurisdiction of the Tribunal.

Appeal against decision of Tribunal with respect to matter of law

107. (1) An appeal under this section shall be made in accordance with rules of the Supreme Court.

(2) If, in proceedings before it, the Tribunal decides a question with respect to a matter of law, a party to the proceedings who is dissatisfied with the decision may appeal to the Supreme Court against the decision.

(3) After deciding the question the subject of an appeal by a party under this section, the Supreme Court may, unless it affirms the decision of the Tribunal on the question—

- (a) make such order in relation to the proceedings in which the question arose as, in its opinion, should have been made by the Tribunal; or
- (b) remit its decision on the question to the Tribunal and order a re-hearing of the proceedings before the Tribunal.

(4) If a re-hearing is held, the Tribunal shall not proceed in a manner, or make an order or a decision, that is inconsistent with the decision of the Supreme Court remitted to the Tribunal.

(5) If a party to proceedings before the Tribunal has appealed to the Supreme Court against a decision of the Tribunal on a question with respect to a matter of law, either the Tribunal or the Supreme Court may suspend, until the appeal is determined, the operation of any order or decision made in the proceedings.

(6) If the Tribunal suspends the operation of an order or a decision, the Tribunal or the Supreme Court may terminate the suspension or, where the Supreme Court has suspended the operation of an order or a decision, the Supreme Court may terminate the suspension.

(7) If a re-hearing is held, fresh evidence, or evidence in addition to or in substitution for the evidence on which the original decision was made, may be given on the re-hearing.

(8) A reference in this section to a matter of law includes a reference to a matter relating to the jurisdiction of the Tribunal.

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Dismissal of frivolous proceedings etc.

108. If, before or during proceedings before it, the Tribunal is satisfied that the proceedings are frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the proceedings should not be entertained, it may—

- (a) dismiss the proceedings; and
- (b) order the person who brought the proceedings to pay the costs of the proceedings.

Tribunal to attempt to conciliate

109. (1) The Tribunal shall not make an order in respect of an application made to it until it has brought, or used its best endeavours to bring, the parties to a settlement acceptable to all of them.

(2) If such a settlement is made, the Tribunal shall make an order that, to the extent authorised by the settlement, gives effect to the terms of the settlement.

(3) Any meetings conducted or proceedings held in the course of attempting to bring or bringing the parties to a settlement shall not be conducted or held in public.

(4) Any statement or admission made before the Tribunal, the Registrar or a Deputy Registrar in a conciliation hearing is not, except with the consent of all the parties, admissible as evidence in proceedings before the Tribunal or in any court.

Applications for variation or setting aside of orders

110. (1) A person who is or was a party to proceedings before the Tribunal may, with the approval of the Registrar or a Deputy Registrar and within the prescribed time, apply for an order varying or setting aside an order made in the proceedings and in force at the time of the application.

(2) The Registrar or the Deputy Registrar shall not approve the making of an application for an order varying or setting aside an order unless—

- (a) the Registrar or the Deputy Registrar is satisfied that there is sufficient reason to do so; or
- (b) the order was made in the person's absence and the Registrar or the Deputy Registrar is satisfied that there were reasonable grounds for that absence.

(3) An application for an order varying or setting aside an order shall (as far as practicable) not be heard by the person who made the original order.

(4) The Tribunal may order a party to an application made under this section who fails to attend the hearing of the application to pay part or all of the costs of the proceedings.

No appeal from order of Tribunal

111. (1) Except as provided by sections 107 (which relates to appeals against decisions of the Tribunal with respect to matters of law) and 110, an order of the Tribunal is binding on all parties to the proceedings in which the order is made and no appeal shall lie in respect of such an order.

(2) Except as provided by section 114 (which relates to reasons for decisions), the Tribunal is not required to make any note or other record of proceedings before it (other than to record any order made in the proceedings) and failure to keep any such note or other record shall not give rise to any ground of appeal or review.

Orders for payment of money

112. (1) If an order of the Tribunal is for payment of an amount of money (including any amount awarded as costs), the order shall, on the filing of the documents referred to in subsection (2) in the office or registry of a court having jurisdiction to order the payment of such an amount of money, be deemed to be a judgment of that court for the payment of that amount of money in accordance with the order of the Tribunal.

(2) The documents to be filed are—

- (a) a copy of the order of the Tribunal certified by the Registrar or a Deputy Registrar to be a true copy; and
- (b) an affidavit by the person to whom the amount of money was ordered to be paid specifying the amount unpaid under the order and, if the order is to take effect on any default, the nature of the default.

(3) Notwithstanding anything in any other Act, no fee is payable for the filing of documents under this section.

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Costs

113. The Tribunal shall not, except—

- (a) as provided by sections 108 (which relates to the dismissal of frivolous proceedings etc.) and 110 (which relates to applications to vary or set aside orders); or
- (b) where one or more of the parties to proceedings before the Tribunal are represented by a barrister or solicitor,

allow costs to or against any party to proceedings before the Tribunal.

Reasons for decision of Tribunal

114. (1) The Tribunal shall, at the conclusion of proceedings before it, state orally or in writing its reasons for any order or decision made in the proceedings.

(2) The Registrar shall, as soon as practicable after receiving a request by a party to concluded proceedings, give to the party a copy of the Tribunal's reasons for any order or decision made in the proceedings.

Contravention of orders of Tribunal

115. A person shall not wilfully contravene or fail to comply with any order (not being an order for the payment of an amount of money or an order referred to in section 52) or decision of the Tribunal.

Misconduct in proceedings before Tribunal

116. (1) A person shall not, in proceedings before the Tribunal—

- (a) wilfully insult the Tribunal;
- (b) wilfully misbehave during proceedings before the Tribunal;
- (c) wilfully and without lawful excuse interrupt proceedings before the Tribunal; or
- (d) without lawful excuse disobey a direction of the Tribunal during proceedings before the Tribunal.

(2) The Tribunal may, in proceedings before it, direct a person who does anything referred to in subsection (1) to leave and a person to whom such a direction is given shall not fail to comply with the direction.

(3) The Registrar may act as informant in proceedings for an offence under this section.

Reference of certain matters concerning landlords' agents

117. The Tribunal may, where it considers it appropriate, bring or cause to be brought the conduct of a landlord's agent in a particular matter to the attention of the registrar of the Council of Auctioneers and Agents under the Auctioneers and Agents Act 1941 or the Commissioner for Consumer Affairs, or both.

PART 7**MISCELLANEOUS****Functions of Commissioner for Consumer Affairs**

118. The Commissioner for Consumer Affairs has, in addition to any other functions conferred or imposed on the Commissioner, the following functions:

- (a) to investigate and carry out research into matters relating to or affecting the relationship between landlords and tenants;
- (b) to investigate and attempt to resolve complaints by landlords and tenants and to take such action, including prosecution, as the Commissioner thinks appropriate;
- (c) to distribute information about this Act and the services provided by the Commissioner and the Tribunal in relation to landlords and tenants;
- (d) to investigate and report on any matters, or make inquiries in relation to any matters, referred to the Commissioner by the Minister in connection with this Act or by the Tribunal;
- (e) to work, consult, co-operate and exchange information with, and provide financial help to, government departments, administrative offices, public authorities and any other bodies that or persons who—
 - (i) advise landlords and tenants with respect to residential tenancy agreements;
 - (ii) distribute information about residential tenancy agreements; or
 - (iii) investigate or carry out research into matters relating to or affecting the relationship between landlords and tenants.

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Delegation by Commissioner for Consumer Affairs

119. (1) The Commissioner for Consumer Affairs may delegate to a person the exercise of any of the Commissioner's functions under this Act other than this power of delegation.

(2) A delegation under this section—

- (a) shall be in writing;
- (b) may be general or limited; and
- (c) may be revoked (wholly or partly) by the Commissioner.

(3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.

(4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Commissioner.

(5) A delegation under this section does not prevent the exercise of a function by the Commissioner.

(6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

Contracting out prohibited

120. (1) The provisions of this Act have effect despite any stipulation to the contrary in any agreement, contract or arrangement and no residential tenancy agreement, contract or other agreement or arrangement, whether oral or wholly or partly in writing, and whether made or entered into before or after the commencement of this section, operates to annul, vary or exclude any of the provisions of this Act.

(2) A person shall not enter into any agreement, contract or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act.

Disclosure of information

121. A person shall not disclose any information obtained in connection with the administration or execution of this Act, unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained;

- (b) in connection with the administration or execution of this Act;
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings;
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Shortened references to Tribunal

122. In any other Act, in any instrument made under any Act or in any other instrument of any kind, except in so far as the context or subject-matter otherwise indicates or requires, a reference to the Residential Tenancies Tribunal shall be read as a reference to the Residential Tenancies Tribunal of New South Wales constituted by this Act.

Authentication of certain documents

123. Every summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Tribunal may be sufficiently authenticated without the seal of the Tribunal if signed by the Chairperson or by any member of the staff of the Tribunal authorised to do so by the Chairperson.

Evidence and proceedings for offences

124. (1) In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) the constitution of the Tribunal; or
- (b) the appointment of, or the holding of office by, any member.

(2) Except as provided by subsection (3), proceedings for an offence against this Act shall be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

(3) Proceedings for an offence against section 72 (1) or 115 shall be dealt with by—

- (a) a Local Court constituted by a Magistrate sitting alone; or
- (b) with the consent of the Minister—the Supreme Court in its summary jurisdiction.

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(4) The maximum penalty that may be imposed by a Local Court in proceedings for an offence against this Act is 50 penalty units or such other amount as may be prescribed.

(5) Proceedings for an offence against this Act may be brought within the period of 3 years that next succeeds the commission of the offence or, only with the consent of the Attorney General, at any time.

Offences and penalties

125. (1) A person who contravenes or fails to comply with a provision set out below is guilty of an offence against this Act and liable to a penalty not exceeding the penalty specified in relation to that provision:

- section 12 (2)—2 penalty units;
- section 17 (2)—5 penalty units;
- section 22 (2)—5 penalty units;
- section 24 (5)—5 penalty units;
- section 29 (2)—2 penalty units;
- section 32 (1), (2), (3)—2 penalty units;
- section 36—5 penalty units;
- section 37—20 penalty units;
- section 38 (1), (2)—5 penalty units;
- section 39—5 penalty units;
- section 40 (1), (2), (3)—5 penalty units;
- section 41 (1), (2), (3)—5 penalty units;
- section 45 (6)—5 penalty units;
- section 52 (1), (2)—50 penalty units;
- section 72 (1)—200 penalty units;
- section 73 (5)—5 penalty units;
- section 115—50 penalty units or 12 months' imprisonment, or both;
- section 116 (1)—5 penalty units or 6 months' imprisonment, or both;
- section 116 (2)—5 penalty units;
- section 120 (2)—20 penalty units;
- section 121—5 penalty units.

(2) A contravention or failure to comply with a provision of this Act that is not listed in subsection (1) does not give rise to an offence.

(3) A reference in this Act to a number (whether fractional or whole) of penalty units is a reference to an amount of money equal to the amount obtained by multiplying \$100 by that number of penalty units.

Contracts Review Act 1980

126. Nothing in this Act limits the operation of the Contracts Review Act 1980.

Offences by corporations

127. (1) If a corporation contravenes, whether by act or omission, any provision of this Act, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act.

(4) This section does not apply to or in respect of a person who is a director, or who is concerned in the management, of a statutory corporation.

Offences against this Act

128. A person who—

- (a) aids, abets, counsels or procures a person to contravene;
- (b) induces, or attempts to induce, a person, whether by threats or promises or otherwise, to contravene;
- (c) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of; or
- (d) conspires with others to contravene,

a provision of this Act referred to in section 125 (1) is guilty of an offence against this Act and liable to the same penalty as a person who contravenes the provision.

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Costs of administration

129. (1) The costs of the administration of this Act in any year shall not, as far as practicable, exceed the amount of contributions paid for that purpose into the Residential Tenancies Program Account.

(2) Nothing in this Act operates to appropriate or authorise the use of funds contained in—

- (a) the Auctioneers and Agents Statutory Interest Account established under the Auctioneers and Agents Act 1941; or
- (b) the Rental Bond Interest Account established under the Landlord and Tenant (Rental Bonds) Act 1977,

for any additional purpose for which those funds could not be used before the date of assent to this Act.

Service of documents

130. (1) A notice or other document (other than a notice of termination) required to be given to a tenant under this Act may be given—

- (a) by delivering it personally to the tenant or a person apparently of or above the age of 16 years by whom the rent payable by the tenant is ordinarily paid;
- (b) by delivering it to the residential premises occupied by the tenant and by leaving it there with some person apparently of or above the age of 16 years for the tenant;
- (c) by sending it by post to the residential premises occupied by the tenant; or
- (d) in such other manner as may be prescribed for the purposes of this section or approved by the Tribunal.

(2) A notice or other document (other than a notice of termination) required to be given to a landlord under this Act may be given—

- (a) by delivering it personally to the landlord, the landlord's agent under a residential tenancy agreement or a person apparently of or above the age of 16 years to whom the rent payable to the landlord is ordinarily paid;
- (b) by sending it by post to the landlord's usual place of residence or business or employment; or
- (c) in such other manner as may be prescribed for the purposes of this section or approved by the Tribunal.

(3) A document given or an application made to the Tribunal may be given or made to the Tribunal or lodged with the Registrar by leaving it at, or by sending it by post to—

- (a) the office of the Tribunal;
- (b) if it has more than one office—any one of its offices; or
- (c) any other prescribed place.

(4) A notice of termination given under this Act may be given in such manner as may be prescribed for the purposes of this section.

(5) Nothing in subsection (3) affects the operation of any provision of a law or of the rules of a court authorising a document to be given to or lodged with the Tribunal in a manner not provided for by subsection (3).

(6) In subsection (1), a reference to a tenant shall be read as a reference to a person appointed by a tenant under section 31 (which relates to the appointment of agents).

Penalty notices for certain offences

131. (1) In this section—

“authorised officer” means—

- (a) the Commissioner for Consumer Affairs; or
- (b) a person appointed in writing by the Commissioner as an authorised officer for the purposes of this section.

(2) If it appears to an authorised officer that any person has committed an offence prescribed for the purposes of this section, the authorised officer may give a notice to the person to the effect that if the person does not desire to have the matter determined by a court, the person may pay to the Commissioner for Consumer Affairs within the time specified in the notice an amount of penalty prescribed for the offence if dealt with under this section.

(3) A person alleged to have committed an offence to which this section applies has the right to decline to be dealt with under this section.

(4) A person who fails to pay the penalty within the time specified in the notice given to the person or within such further time as may in any particular case be allowed shall be deemed to have declined to be dealt with under this section.

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(5) If the amount of any prescribed penalty for an alleged offence is paid pursuant to this section, no person is liable to any further proceedings for the alleged offence.

(6) Payment of a penalty pursuant to this section shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(7) The regulations may—

- (a) prescribe the offences which shall be prescribed offences for the purposes of this section by setting out the offences or by a reference to the provision of this Act under which the offence arises; and
- (b) prescribe the amount of penalty payable under this section for any prescribed offence.

(8) A penalty prescribed under this section for any offence shall not exceed any maximum amount of penalty which could be imposed for the offence by a Local Court.

(9) The provisions of this section shall be construed as supplementing, and not as derogating from, any other provision of this Act, any other Act or regulation, by-law or ordinance under any other Act in relation to proceedings which may be taken in respect of offences.

New South Wales Land and Housing Corporation

132. Sections 27, 33, 40 and 41 do not apply to the New South Wales Land and Housing Corporation.

Regulations

133. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) the completion by or on behalf of a landlord and a tenant of condition reports in relation to the condition of residential premises before the commencement, or after the termination, or both, of a tenancy;
- (b) the provision of information to the tenant by the landlord at the time of entering into a residential tenancy agreement;

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- (c) the maximum charge by a landlord or the landlord's agent for preparation of a residential tenancy agreement or any other matter connected with preparation of a residential tenancy agreement;
 - (d) the execution of a residential tenancy agreement by a tenant or prospective tenant suffering under a disability;
 - (e) residential tenancy agreements relating to, and the occupation by tenants of, movable dwellings or sites on which a movable dwelling is situated or intended to be situated;
 - (f) the service of notices or other documents under this Act;
 - (g) a standard form or forms of residential tenancy agreement;
 - (h) goods abandoned by a tenant;
 - (i) the procedure and practice to be followed in proceedings before the Tribunal (including the practice and procedure to be followed in the office of the Registrar) and any incidental or related matters;
 - (j) regulating, or empowering the Registrar to regulate, the business of the Tribunal and empowering the Chairperson or the Registrar to give directions as to the steps to be taken to make any proceedings before the Tribunal ready for hearing;
 - (k) the duties of, and the records to be kept by, the Registrar in relation to, or for the purposes of, any proceedings before the Tribunal; and
 - (l) fees to be paid under this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.
- (3) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) apply differently according to different factors of a specified kind;
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body; or
 - (d) exempt from the operation of this Act or any specified provision of this Act any specified person, residential tenancy agreement or premises or any specified class of persons, residential tenancy agreements or premises, either unconditionally or subject to conditions,
- or may do any combination of those things.

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Repeal of Act No. 60, 1986

134. The Residential Tenancies Tribunal Act 1986 is repealed.

Amendment of Act No. 27, 1902, s. 100i (Interpretation)

135. The Justices Act 1902 is amended by inserting (in appropriate alphabetical order) in section 100i (1) in paragraph (a) of the definition of "penalty notice" the following matter:

Residential Tenancies Act 1987, section 131;

Amendment of Act No. 16, 1974, s. 4A (Act applies to certain claims by lessees)

136. The Consumer Claims Tribunals Act 1974 is amended by omitting section 4A.

Savings, transitional and other provisions

137. Schedule 2 has effect.

SCHEDULE 1

(Sec. 80)

PROVISIONS RELATING TO THE MEMBERS OF THE TRIBUNAL**Age of members**

1. (1) A person of or above the age of 65 years is not eligible to be appointed as a full-time member or to act in the office of a full-time member.

(2) A person of or above the age of 70 years is not eligible to be appointed as a part-time member or to act in the office of a part-time member.

Terms of office of members

2. (1) Subject to this Schedule, a member shall hold office for such period, not exceeding 5 years, as may be specified in the instrument of appointment of the member but is eligible (if otherwise qualified) for re-appointment.

(2) A member shall, before first sitting as a member, take an oath or make an affirmation in the prescribed form that the member will faithfully and impartially discharge the duties of the office of a member.

*Residential Tenancies 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE TRIBUNAL—*continued***Effect of certain other Acts**

3. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

(2) If provision is made by or under any other Act—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member.

Remuneration of members

4. (1) The Chairperson and any other full-time member are entitled to be paid—

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of each of them.

(2) A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time member.

Casual vacancies in office of member

5. (1) A member shall be deemed to have vacated office if the member—

- (a) dies;
- (b) is unavailable for duty as a member for a period of 28 consecutive days except on leave granted, in the case of the Chairperson, by the Minister, or in the case of any other member, by the Chairperson;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;

*Residential Tenancies 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE TRIBUNAL—*continued*

- (f) resigns the office by instrument in writing addressed to the Minister;
- (g) being—
 - (i) a full-time member, reaches the age of 65 years; or
 - (ii) a part-time member, reaches the age of 70 years;
- (h) being the Chairperson or another full-time member, is retired from office by the Governor under subclause (2); or
- (i) is removed from office by the Governor under subclause (3).

(2) A full-time member may, after reaching the age of 60 years and before reaching the age of 65 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

(3) The Governor may remove a member from office for incapacity, incompetence or misbehaviour.

Filling of vacancy in office of member

6. If the office of any member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Acting members and acting Chairperson

7. (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and shall be deemed to be a member.

(2) The Minister may, from time to time, appoint another full-time member who is qualified to be appointed as Chairperson to act in the office of the Chairperson, and the full-time member, while so acting, has and may exercise all the functions of the Chairperson and shall be deemed to be the Chairperson.

(3) The Minister may remove any person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause—

- (a) a vacancy in the office of a member or the Chairperson shall be deemed to be an absence from office of the member or the Chairperson; and
- (b) a full-time member shall be deemed to be absent from office as a member during any period when the member acts in the office of the Chairperson pursuant to an appointment under this clause.

*Residential Tenancies 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE TRIBUNAL—*continued***Preservation of rights of full-time member previously public servant etc.**

8. (1) Subject to subclause (2) and to the terms of appointment, if a full-time member was, immediately before being appointed as a full-time member—

- (a) an officer of the Public Service or a Teaching Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she—

- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a full-time member; and
- (g) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as a full-time member and—

- (h) his or her service as a full-time member shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(2) If the full-time member would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled on becoming (whether on appointment as a full-time member or at any later time while holding office as a full-time member) a contributor to any other superannuation scheme, and the provisions of subclause (1) (i) cease to apply to or in respect of him or her in any case where he or she becomes a contributor to any such other superannuation scheme.

(3) Subclause (2) does not prevent the payment to a full-time member on his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(4) A full-time member is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

*Residential Tenancies 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE TRIBUNAL—*continued*

(5) In this clause—

“statutory body” means any body declared under clause 10 to be a statutory body for the purposes of this Schedule;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

Full-time member entitled to re-appointment to former employment in certain cases

9. (1) A person who—

(a) ceases to be a full-time member by reason of the expiration of the period for which the person was appointed or by reason of resignation;

(b) was, immediately before being appointed as a full-time member—

(i) an officer of the Public Service or a Teaching Service; or

(ii) an officer or employee of a statutory body; and

(c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as a full-time member.

(2) Where subclause (1) does not apply to a person who—

(a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and

(b) is after that appointment appointed as a full-time member,

the person has the rights (if any) to appointment as such an officer or employee, in the event of ceasing to be a full-time member, as are specified in the instrument of appointment as a full-time member or as are agreed on by the person and by or on behalf of the Government.

(3) In this clause—

“statutory body” means any body declared under clause 10 to be a statutory body for the purposes of this Schedule.

Declaration of statutory bodies

10. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

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SCHEDULE 2

(Secs. 5, 137)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

PART 1—*Existing oral residential tenancy agreements***Certain provisions not to apply**

1. Sections 12, 17, 20, 21 and 25 (1) (a) do not apply to an oral residential tenancy agreement made before the commencement of section 5.

Application to previous breaches

2. An application may not be made under section 16, 57 or 70 in respect of a dispute or breach of an oral residential tenancy agreement that occurred before the commencement of section 5.

Charges

3. Section 19 does not apply to or affect charges paid or payable before the commencement of section 5 by a landlord or tenant under an oral residential tenancy agreement.

Condition of residential premises at termination

4. In its application to an oral residential tenancy agreement, section 26 (1) (d) shall be read as if the words “as set out in any condition report forming part of the residential tenancy agreement” were omitted and the words “as they were in at the commencement of the tenancy” were inserted instead.

Urgent repairs

5. Section 28 does not confer on a tenant under an oral residential tenancy agreement any right to seek reimbursement for costs incurred before the commencement of section 5.

Changes of names and addresses

6. Section 32 (1), and section 32 (3) to the extent that it relates to a breach of section 32 (1), do not apply to an oral residential tenancy agreement made before the commencement of section 5.

Rights of persons in possession

7. Sections 75 and 76 do not apply—

- (a) to proceedings for recovery of residential premises subject to an oral residential tenancy agreement if the proceedings were commenced before the commencement of section 5; or
- (b) if possession of residential premises was recovered before the commencement of section 5.

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SCHEDULE 2—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Previous actions etc. not affected**

8. Nothing in this Act affects—

- (a) the validity of any action done or payment made before the commencement of section 5 in pursuance of a term of an oral residential tenancy agreement that contravenes, is ineffective or is void because of this Act; or
- (b) any right or remedy which a landlord or a tenant under an oral residential tenancy agreement would have had but for this Act in relation to such an action or payment or any breach of the agreement that occurred before the commencement of section 5.

PART 2—Existing written and partly written residential tenancy agreements**Application of Act to written and partly written residential tenancy agreements**

9. Part 2, sections 17–33 of Part 3 and sections 53–63, 66–70 and 74–79 of Part 5 apply to written and partly written and partly oral residential tenancy agreements made before the commencement of section 5—

- (a) from a day prescribed for the purposes of this clause; and
- (b) only in the manner and to the extent specified by the regulations.

Termination of written and partly written residential tenancy agreements

10. (1) This clause applies to written and partly written and partly oral residential tenancy agreements made before the commencement of section 5.

(2) If—

- (a) a landlord or a tenant gives notice of termination of a residential tenancy agreement; and
- (b) the tenant fails to deliver up vacant possession of the residential premises on the day specified,

the landlord may, not later than 30 days after that day, apply to the Tribunal for an order terminating the agreement and an order for possession of the premises.

(3) The Tribunal may, on application by a landlord under this clause, make an order terminating the agreement if it is satisfied that the landlord is entitled to terminate the agreement.

Suspension or refusal of orders for termination

11. (1) The Tribunal may suspend the operation of an order for possession of residential premises made under clause 10 (other than premises which are part of the landlord's principal place of residence) for a specified period if it is satisfied that it is desirable to do so, having regard to the relative hardship likely to be caused to the landlord and tenant by the suspension.

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SCHEDULE 2—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(2) Notwithstanding clause 10, the Tribunal may refuse to make an order terminating an agreement and an order for possession under that clause if it is satisfied that the landlord was wholly or partly motivated to give notice of termination by the fact that—

- (a) the tenant had applied or proposed to apply to the Tribunal for an order;
- (b) the tenant had complained to a governmental authority or had taken some other action to secure or enforce his or her rights as a tenant; or
- (c) an order of the Tribunal was in force in relation to the landlord and tenant.

(3) In this clause, a reference to a tenant includes a reference to a person who has applied to the Tribunal for an order under section 35.

PART 3—*General***Recovery of possession of premises**

12. (1) Nothing in this Act (including section 71) or Schedule 1 to the Landlord and Tenant (Amendment) Act 1987 affects or prevents from being taken—

- (a) any proceedings for the recovery of possession of land subject to a residential tenancy agreement, if the proceedings were commenced before the commencement of section 5; or
- (b) the recovery of possession of that land in pursuance of any judgment, order or direction made in any such proceedings.

(2) In this clause, a reference to proceedings for recovery of possession of land includes a reference to the giving of a notice to quit.

Continuity of Tribunal

13. The Residential Tenancies Tribunal, as constituted by this Act, is a continuation of, and the same legal entity as, the Residential Tenancies Tribunal constituted by the Residential Tenancies Tribunal Act 1986.

Appointments etc. under the Residential Tenancies Tribunal Act 1986

14. Any function exercised or any other act, matter or thing done or authorised by or under a provision of the Residential Tenancies Tribunal Act 1986 (including the appointment of the members of the Tribunal and the staff of the Tribunal) shall be deemed to have been exercised or done or authorised by or under the corresponding provision (if any) of this Act and has effect accordingly.

Residential Tenancies Tribunal Regulation 1986

15. (1) The Residential Tenancies Tribunal Regulation 1986 shall be deemed to have been made under this Act and to have taken effect on and from the commencement of section 133.

Residential Tenancies 1987

SCHEDULE 2—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(2) Nothing in subclause (1) requires the Regulation referred to in that subclause to be re-made, laid before Parliament or published in the Gazette.

Rental bonds claims

16. The repeal of section 4A of the Consumer Claims Tribunals Act 1974 by this Act does not affect any proceedings relating to a claim referred to in that section that were commenced before that repeal.

Savings and transitional regulations

17. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act or the Landlord and Tenant (Amendment) Act 1987.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication in the Gazette.

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule (other than clause 13 and clause 14 to the extent that clause 14 relates to the appointment of the members and staff of the Tribunal).